

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE FORMAL	)	
COMPLAINT OF EMBLEM ASSOCIATES,	)	
LLC AGAINST ARTESIAN WATER	)	PSC COMPLAINT DOCKET
COMPANY, INC. REGARDING A	)	NO. 16-008
CONTRIBUTION-IN-AID-OF-CONSTRUCTION )		
(CIAC) DISPUTE (FILED JANUARY 6, 2016)	)	

DIRECT TESTIMONY OF

CONNIE S. McDOWELL

ON BEHALF OF

COMMISSION STAFF

MAY 16, 2016

**Statement of Qualifications**

**Q: State your name and the name and address of your employer.**

A: Connie S. McDowell. I am employed by the Delaware Public Service Commission (“Commission”). My work address is 861 Silver Lake Boulevard, Suite 100, Dover, Delaware, 19904.

**Q: What is your position with the Public Service Commission?**

A: I am a Senior Regulatory Policy Administrator with the Commission. I was employed by the Commission from July 1984 to December 2006 and rehired in my current position as of June 2013.

**Q: Please describe your duties and responsibilities at the Commission.**

A: My duties include reviewing dockets filed with the Commission to determine the policy direction for the Commission Staff to address in docketed cases, providing technical direction and training to the public utility analysts assigned to me, preparing and presenting testimony with recommendations, participating in the development of work plans for docketed cases, and managing the public utility analysts assigned to participate in those dockets.

**Q: What is your professional experience and education?**

A: I received a Bachelor of Arts & Science Degree in Mathematics from the University of Delaware and Master’s Degree in Business Administration from Delaware State University. Also, I was an adjunct instructor in the area of Accounting and Marketing at Delaware Technical & Community College – Terry Campus for 5 years. During my 24 years of employment at the Commission, I have held various positions as a Public Utility Analyst I, II and III, Chief of Technical Services, Hearing Examiner and Senior Regulatory Policy Administrator, and I have testified in several telecom, cable, electric, natural gas, water and wastewater cases.

1           **Q.     For whom are you testifying in this proceeding?**

2           A.     I am testifying on behalf of the Commission Staff (“Staff”).

3  
4           **Q.     What is the purpose of your testimony?**

5           A.     I am the Case Manager and lead witness in this proceeding. The purpose of my  
6           testimony is to support Artesian Water Company’s (“Artesian’s”) calculation  
7           and collection of a Contribution-In-Aid-of-Construction (“CIAC”) from  
8           Emblem Associates, LLC to serve a 245-unit apartment complex, “Emblem at  
9           Christiana” (formerly known as “Churchman’s Meadows”) being constructed  
10          near the Christiana Mall.

11  
12          **Q.     What is CIAC, and why is it collected from developers?**

13          A.     Per 26 *Del. Admin. C.* § 2001-1.3.12, CIAC is defined as “cash, services, funds,  
14          property or other value received from State, municipal, or other governmental  
15          agencies, individuals, contractors, or others for the purpose of constructing or  
16          aiding in the construction of utility plant and which represent a temporary  
17          infusion of capital from sources other than utility bondholders or stockholders.”  
18          The public policy rationale of CIAC is to collect funds from the individual or  
19          entity causing the costs incurred for the construction of infrastructure, rather  
20          than from the utility’s shareholders or the utility’s current customers.

21  
22          **Q.     Has the PSC Commission Order No. 6873 concerning the collection of**  
23          **CIAC been challenged in Superior Court by the Home Builders**  
24          **Association of Delaware and Reybold Group, a developer? What was the**  
25          **Court’s decision?**

26          A.     Yes, in 2007, PSC Commission Order No. 6873 was challenged by the Home  
27          Builders Association of Delaware and Reybold Group, a developer. By this  
28          Order, the Commission revised its rules to require CIAC instead of Customer  
29          Advances for the majority of water expansion costs. The Home Builders  
30          Association of Delaware’s position was that the Commission was violating the  
31          Public Utilities Act of 1974 in that it improperly eliminated the right of site

1 developers and water utilities to negotiate between CIAC and Customer  
 2 Advances, which were refunded back to the developer as new customers  
 3 subscribed to the water system. Reybold Group's position challenged the  
 4 collection of Category 2 costs. The Court upheld the Commission's Order for  
 5 the collection of CIAC from developers, home builders, and others to pay for  
 6 water utility infrastructure expansion costs and noted that the Commission's  
 7 intent was to limit the number of rate cases being filed by water utilities which  
 8 were passing expansion costs onto current customers.

9  
 10 **Q. Please describe the project that Artesian had to construct in order to**  
 11 **provide water service to "Emblem at Christiana." Was this project needed**  
 12 **to serve only "Emblem at Christiana" or were there other entities?**

13 **A.** Artesian had to construct a water main from Route 273 to the Christiana Mall.  
 14 This main was constructed to serve "Emblem at Christiana," Christiana Fashion  
 15 Center, Cabela's, Cinemark Movie Theater, and a proposed shopping center,  
 16 Market Place at Christiana. Artesian also constructed a booster station to serve  
 17 these entities. However, this station was not necessary to provide water service  
 18 to "Emblem at Christiana" due to the grade at the location, and Artesian has not  
 19 sought a CIAC from Emblem Associates, LLC for the booster station.

20  
 21 **Q. Has Artesian provided a breakdown of CIAC for this project and have the**  
 22 **other entities paid their share of the CIAC?**

23 **A.** Yes. Artesian provided its estimate of the project and the breakdown of CIAC  
 24 to the 5 entities listed in the previous question. The original estimate for the  
 25 water main extension was \$1,350,000, and the allocation and payment status  
 26 follows:

27	Christiana Fashion Center	CIAC paid	\$512,372
28	Cabela's	CIAC paid	\$ 74,330
29	Cinemark Movie Theater	CIAC paid	\$ 25,116
30	Emblem (Churchman's Meadows)	CIAC to be paid	\$459,000
31	Market Place at Christiana	CIAC to be paid	<u>\$279,182</u>
32	Total CIAC Required		\$1,350,000

1           **Q.     Does the water main extension meet the CIAC Requirement For Facilities**  
2           **Extensions criteria in 26 Del. Admin. C. § 2001-3.8.1?**

3           **A.**     Yes. According to 26 *Del. Admin. C.* § 2001-3.8.1, a “utility shall require a  
4           CIAC when the request for a Facilities Extension will require the installation of  
5           pipe and/or associated utility plant. All charges henceforth to contractors,  
6           builders, developers, municipalities, homeowners, or other project sponsors,  
7           seeking the construction of water Facilities from a water utility company shall  
8           be in the form of a CIAC to be paid to the water utility as Category 1A, 1B and  
9           Category 2 costs, as computed under §§ 3.8.2 and 3.8.6, subject to true-up under  
10          § 3.8.8.” Specifically, the main pipe extension at issue here is a Category 1B  
11          cost, which is defined by 26 *Del. Admin. C.* § 2001-3.8.2 as     “All off-site  
12          Facilities costs that are directly assignable to a specific project from such point  
13          100 feet beyond the boundary of the project and continuing to the utility’s  
14          existing Main.” Furthermore, 26 *Del. Admin. C.* § 2001-3.8.2 directs that  
15          Category 1B Costs “shall be designated by the utility and funded by the  
16          contractor, builder, developer, municipality, homeowner, or other project  
17          sponsor, as a CIAC not subject to refund. These costs include such items as  
18          Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and  
19          shall include any other items that are necessary for the provision of utility water  
20          service.”.

21  
22          **Q.     The estimated cost for the project was \$1,350,000, and the allocation of**  
23          **CIAC was based on that estimate. What was the final cost of the main pipe**  
24          **extension from Route 273 to the Christiana Mall?**

25          **A.**     The actual cost of this project was \$1,419,347.

26  
27          **Q.     Why wasn’t the actual cost of the project used for the determining of the**  
28          **CIAC?**

29          **A.**     The Company did not use the actual cost of the project because it has stated that  
30          this project will provide additional reliability to its system. 26 *Del. Admin. C.*  
31          § 2001-3.8.2 does not allow Category 1B to “include ... any additional

1 Facilities costs elected to be incurred by the utility in connection with the  
2 Facilities Extension for company betterment,” which instead “the utility shall  
3 be entitled to pay for and include in its rate base.”  
4

5 **Q. Was the Route 273 to the Christiana Mall project included in rate base and**  
6 **the CIAC paid by Christiana Fashion Center, Cabela’s, and the Cinemark**  
7 **Movie Theater included in the last rate case, PSC Docket No. 14-132?**

8 **A.** Yes. The actual cost of the project was included in utility plant in service and  
9 offset by the CIAC collected from the above three entities and therefore in the  
10 rate base calculation for the rate case.  
11

12 **Q. Was there a disallowance in the rate base calculation for the two entities,**  
13 **“Emblem at Christiana” and Market Place at Christiana that had not paid**  
14 **their share of CIAC?**

15 **A.** No. Pursuant to 26 *Del. C.* § 302:

16 If a water utility is not, pursuant to § 122(3)c. of Title 161, under  
17 review concerning its water system’s ability to provide adequate  
18 service to its customers under its present certificates of public  
19 convenience and necessity or subject to a review by the  
20 Commission of the appropriate rates to be charged by the water  
21 utility in light of the quality of service being provided to its  
22 customers, the Commission will include in the utility’s rate base,  
23 treat as used and useful utility plant, and, accordingly, allow to  
24 be fully recovered in the utility’s rates without imputation of  
25 revenues, all costs which are incurred by the water utility, in the  
26 exercise of its good faith business judgment, in constructing  
27 facilities (including without limitation supply, treatment and  
28 transmission facilities) to serve the needs of existing customers  
29 or of persons who are reasonably anticipated by the water utility  
30 to be its customers within 3 years from the date used by the  
31 Commission to recognize rate base in the rate proceeding. The  
32 number of customers reasonably anticipated to be added within  
33 that 3-year period will consist of customer projections which are  
34 relied on by the utility and are generated by professional  
35 engineers or planners, governmental or regulatory agencies,  
36 officials or authorities, or the water utility itself, and which are

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<sup>1</sup> During the rate case or any other time of which I am aware, Artesian has not been under review by the Department of Health and Social Services’ Office of Drinking Water.

not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but who have not, as of the end of the 3-year period, been added”.

In Artesian’s last rate case, the Route 273 to the Christiana Mall water main extension was included in plant in service with an offset of CIAC from three of the entities listed above. Artesian has three years to show that utility plant in service is used and useful. So, if “Emblem at Christiana” and Marketplace at Christiana does not request water service in that three-year period and Artesian files a rate case during that three-year period, then the Commission could disallow their portion from utility plant in service. This does not relieve Emblem from paying CIAC. In a later rate case, Artesian would include their portion of costs in utility plant in service with an offset of the CIAC.

**Q. Do Commission regulations require water utilities to provide notice of a CIAC to a developer by a certain time or in a certain format?**

**A.** No. Commission regulations do not address when or how a water utility must notify a developer regarding a CIAC.

**Q. If a water utility fails to provide notice of a CIAC to a developer by a date certain, is that developer excused from paying the CIAC?**

**A.** No. Commission regulations do not address when or how a water utility must notify a developer regarding a CIAC. As previously noted, the CIAC is based on the cost of the expansion and must be paid by the entity causing the costs, regardless of when or how the entity is informed of the CIAC.

## **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

1           **Q.     Please summarize your conclusions and recommendations.**

2           **A.     Developers, homebuilders, and others are required by Commission regulations**  
3                   to pay for water expansion costs due to construction to provide water service to  
4                   their facilities. This includes both Category 1A and 1B costs. Artesian has  
5                   provided the breakdown of costs for the Route 273 to the Christiana Mall water  
6                   main extension to the five projects, including “Emblem.at Christiana.” Three  
7                   of the developers have submitted CIAC for this extension. Construction on the  
8                   fifth and last project, Market Place at Christiana, has not yet begun, but when it  
9                   does, Artesian similarly will request CIAC from its developers.

10  
11           **Q.     If Emblem Associates, LLC is not required to pay for its share of the**  
12                   **expansion costs, would this undermine the collection of CIAC from other**  
13                   **developers, homebuilders, and others and shift those costs to current water**  
14                   **utility customers?**

15           **A.     Yes. If a water utility has a Certificate of Public Convenience and Necessity to**  
16                   provide water service in an area, it is required to expand its facilities to any new  
17                   project build by a developer, homebuilder or others, but the public policy  
18                   question is who should pay for that expense – the developer or the water utility’s  
19                   shareholders and current ratepayers? The Commission has determined that the  
20                   requesting party should pay for any expansion in Order No. 6873, and this has  
21                   been upheld by the Delaware Superior Court. In this case, there were five  
22                   parties causing the costs of the expansion. If the Commission did not require  
23                   CIAC, current customers would be paying for the expansion and water utilities  
24                   would be filing rate cases frequently to recover those costs. Also, by relieving  
25                   Emblem Associates, LLC of this requirement, others would challenge this  
26                   requirement and current customers would be paying for their expansion.

27  
28           **Q.     If Emblem Associates LLC does not pay the CIAC, would this be a**  
29                   **violation of the Commission’s CIAC regulations?**

30           **A.     Yes, the Commission’s CIAC regulations require the payment of CIAC for the**  
31                   water expansion costs to provide water service to Emblem Associates, LLC.

1

2       **Q:    Does this conclude your testimony?**

3       **A:    Yes.**